IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

WP(C).No. 19811 of 2007(H)

ID.24/2004 of LABOUR COURT, KOLLAM

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PETITIONERS:

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1. SALIM, AGED 49 YEARS,
S/O. MUHAMMED MUSTHAFFA, SALIM MANZIL,CHATHANPARA,
THOTTAKKADU, THIRUVANANTHAPURAM DISTRICT,
REPRESENTED BY POWER OF ATTORNEY HOLDER,
M.S.SHAREEF,AGED 47 YEARS,S/O.MOHAMMED IBRAHIM,
SHAREEF MANZIL, PEROOR, VELLALLOOR VILLAGE.

2. NADEERA, W/O. SALIM,
SALIM MANZIL, CHATHANPARA, THOTTAKKADU,
THIRUVANANTHAPURAM DISTRICT, REPRESENTED BY POWER
OF ATTORNEY HOLDER, M.S.SHAREEF, AGED 47 YEARS,
S/O. MOHAMMED IBRAHIM, SHAREEF MANZIL, PEROOR,
VELLALLOOR VILLAGE.

BY ADV. SRI.T.M.ABDUL LATHEEF
SRI.A.MOHAMED RASHEED

RESPONDENT:

SUNDARESAN, S/O. BHASKARAN,
KATTIL VEEDU, VELLALLORE, PEROOR P.O.,
(VIA) KILIMANOOR, PIN-695 601.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P.(C)No. 19811 OF 2007

Dated this the 1st day of October, 2007

JUDGMENT

The management in I.D.No.24/2004 before the Labour Court, Kollam, is the petitioner herein who challenges Ext.P7 award passed by the Labour Court in that I.D. The issue referred for adjudication was whether two workers namely, Sri. B. Sundaresan and Smt. Wilsamma were employees in the rubber estate owned by the petitioners and whether there is denial of employment of those workers. There was a further consequential issue as to whether the workers are entitled to be reinstated or get compensation as claimed. The Labour Court found that the workmen have not proved that the said Smt. Wilsamma was employed by the petitioners. Therefore, the claim in respect of that workman was rejected. In respect of the other workman the Labour Court found that he was denied employment unjustly. However, instead of directing reinstatement, the petitioners were directed to pay an amount of Rs.30,000/- as compensation to the said workman. The said award is under challenge before me.

2. The contention of the petitioners is that the said Sri. Sundaresan was not a workman employed under them. They raised another contention that tapping being an agricultural activity, the same is covered by the Kerala Agricultural Workers Act and therefore, no dispute under the Industrial Disputes Act would lie in respect of alleged denial of employment to such a workman. They also relies on the amendment to the definition of 'workman' brought in 1984 in the Industrial Disputes Act. In respect of the amendment, the same has not yet been brought into force even assuming that the amended definition would apply in this case. As far as the contention on the basis of the Kerala Agricultural Workers Act is concerned there is no exclusion of the Industrial disputes Act in the Kerala Agricultural Workers Act. Therefore nothing prevents an agricultural worker from raising an industrial dispute as he would be a workman as defined under the Industrial Disputes Act also. In any event, admittedly the petitioners' establishment is a rubber plantation which is clearly an establishment coming within the Industrial Disputes Act. Regarding the question on merits the tribunal has noticed

that in paragraph 6 of the written statement itself, the petitioners have admitted that the said Sri. Sundaresan was employed for two years commencing prior to 3.5.01 and that his service was terminated giving compensation and by executing a document for that purpose. That document was disbelieved by the Labour Court. After consideration of the evidence adduced it was noted that the witnesses examined by the petitioners to prove that document did not withstand the cross-examination in respect of that document. The Labour Court noticed that the name 'Sundaresan is not mentioned in that document at all and it referred to one 'Money'. The witnesses, who were examined to prove that document gave evasive answers to pointed questions and one of the witnesses even went to the extent of saying that he does not know nothing about the execution of the document.

3. From a perusal of the award, I am satisfied that the Tribunal has entered the findings on facts on the basis of the evidence before it giving very cogent reasons for arriving at the conclusion. There is absolutely nothing perverse in such findings. Without a finding that the conclusion is perverse I

cannot in exercise of my jurisdiction under Article 226 of the Constitution of India interfere with an award of an Industrial Tribunal or Labour Court.

In the above circumstances, I do not find any merit in this writ petition and accordingly, the same is dismissed.

S. SIRI JAGAN, JUDGE

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